

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Edward A. Bobrick	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 6188	DATE	4/25/2003
CASE TITLE	Christopher G. Bowman, D.O. vs. Reliance Standard Life Insurance Co		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Plaintiff's Motion for Reconsideration of Denial of Attorneys' Fees [21-1] is denied. Enter Memorandum Order.

*Edward A. Bobrick*

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials  SRR	APR 30 2003 <i>Ceyn</i> date docketed docketing deputy initials 4/25/2003 date mailed notice SR mailing deputy initials	Document Number
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## APR 30 2003

**Edward A. Bobrick,  
Magistrate Judge**

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As this court has already noted, ERISA allows a court, in its discretion, to award “a reasonable attorney's fee and costs of action to either party.” 29 U.S.C. § 1132(g)(1); *Fritcher*, 301 F.3d at 818. While there may be a “modest presumption” in favor of an award of fees, there are, nevertheless, two tests for analyzing whether that “modest presumption is applicable to a particular case. One is a five factor test, in which the court considers: (1) the degree of the offending party’s “culpability or bad faith”; (2) the degree of the offending party’s ability to satisfy an award of attorney’s fees; (3) the degree to which such an award would “deter other persons acting under similar circumstances”; (4) the amount of benefit conferred on all the plan members; and (5) the relative merits of the parties’ positions. *Fritcher*, 301 F.3d at 819. The second test looks to whether a party’s position was substantially justified. *Quinn v. Blue cross and Blue Shield*, 161 F.3d 472, 478 (7<sup>th</sup> Cir. 1998). The Seventh Circuit has suggested that both tests ask essentially the same question: “was the losing party’s position substantially justified and taken in good faith, or was that party simply out to harass its opponent.” *Id.* Once again, as we already have a month ago, we find that an award of fees is inappropriate under these standards.

As we already noted, there is nothing in the record that would lead the court to suspect the defendant was out to harass the plaintiff. This was a case of an insurance company interpreting the evidence from its perspective. The evidence in this case was not, as the plaintiff thinks, completely one-sided. There were some conflicting doctors’ reports, which the insurance company had to resolve. Because the review of the defendant’s decision was *de novo*, however, the court did not have to defer to those resolutions. *Wallace v. Reliance*

*Standard Life Ins. Co.*, 318 F.3d 723, 724 (7<sup>th</sup> Cir. 2003). As a whole, the record shows that the defendant considered plaintiff's claim in good faith and gave plaintiff and his counsel every opportunity to support his claim. Indeed, if anything, the defendant went beyond its obligations in that respect. It was plaintiff, or his counsel, who dropped the ball by failing to provide additional medical evidence despite two deadline extensions, and by failing to accomplish the simple task of providing a job description to accompany plaintiff's claim. No, this is not a case where an award of attorney's fees is warranted.

### **CONCLUSION**

For the foregoing reasons, the plaintiff's motion to alter or amend judgment under Rule 59(e) is DENIED.

ENTERED: Edward A. Bobrick  
EDWARD A. BOBRICK  
U.S. MAGISTRATE JUDGE

**DATE:** April 25, 2003